STATEMENT OF LINDA HELLER KAMM, GENERAL COUNSEL, DEPARTMENT OF TRANSPORTATION, BEFORE THE SUBCOMMITTEE ON OVERSIGHT AND REVIEW, HOUSE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION, MAY 17, 1979

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here to discuss with you the Federal role in procurement of transit equipment under the Urban Mass Transportation Assistance Act of 1964, as amended. We welcome your oversight hearings on this difficult and complex issue.

Congressional intent for UMTA programs has been clear and consistent since authorizing legislation was first enacted in 1964 -- to carry out a Federal assistance program for urban public transportation. There are, however, a number of requirements in the UMTAct and in other statutes which affect the way this program is carried out.

For example, section 16 of the UMTAct and the 1973 Rehabilitation Act place UMTA in a regulatory role with respect to accessibility for elderly and handicapped persons. Section 13(c) of the Act contains labor protection provisions. Section 107 of the National Mass Transportation Assistance Act of 1974 assigns a safety responsibility to UMTA. The Clean Air Act imposes significant planning requirements to be superimposed over UMTA's planning assistance program. The language in Section 3(a)(1) of the UMTAct prohibiting use of "exclusionary or discriminatory" specifications in procurement, which was added in 1974, together with OMB Circular A-102, attachment O, establishing standards for federally assisted procurements, give UMTA overview responsibility to assure fair competition. At the same time, the "Buy America" clause of the Surface

Transportation Assistance Act of 1978 requires UMTA to give preferential treatment to domestic manufacturers.

Other policy considerations such as urban development and revitalization, environmental protection, noise and emission controls, and energy conservation shape the Federal involvement in the transportation assistance program. Furthermore, both transit operators and vehicle manufacturers frequently, jointly or separately, solicit Federal leadership to resolve controversial or specific problem areas. The Federal guidelines for uniform terms and conditions in railcar procurements and the railcar standardization program are examples of our efforts to meet those requests. Finally, with the Federal taxpayer paying 80% of the cost of projects financed with UMTA capital assistance and with a basic need to limit Federal spending, we have a continuing responsibility to attempt to make each investment as cost effective as possible.

Some of these statutory and policy considerations bear directly on transit procurement procedures; other have a less direct impact. To evaluate their effect, we must bear in mind some basic facts. Virtually every local transit authority in this country is publicly owned and few, if any, operate at a profit. With few exceptions, every intracity bus and transit railcar is purchased with Federal funds. The Federal financial assistance provided through UMTA is necessary if public transit service is to be sustained. The influence of Federal statutory and policy interests on transit operators and manufacturers is therefore bound to be pervasive. But this Federal influence must interact with the diverse state, local and private interests of the other members of the transit community.

Procurement problems arise, in part, because there are relatively few sellers of transit equipment and relatively few buyers of that equipment, with the exception of a rather large number of prospective buyers of standard size buses. While each year UMTA participates in the acquisition of approximately 3,500 such buses, requests for UMTA participation in the acquisition of rail equipment and articulated and small buses tend to be sporadic. Individual orders for this equipment never exceed a few hundred vehicles.

Transit vehicles are relatively sophisticated products requiring large capital investment for manufacturing. Due to past domination of the standard size bus market by General Motors, the basic design of these buses has tended to be similar. Other transit vehicles, however, have varied substantially in design. In particular, purchasers of railcars have typically sought vehicles which are specially designed to meet local needs, thus requiring manufacturers to build customized cars. The resulting demand for small numbers of customized cars has increased the costs of the cars and weakened the financial stability of the manufacturers.

U.S. manufacturers of rail passenger rolling stock have suffered major upheavals in recent years. Almost every rail transit rolling stock contract in the last ten years has been marked by serious problems.

The reasons for this volatility and large financial losses suffered by several builders are many and complex. They include issues such as standardization, contractual terms and conditions, inability to meet specification requirements, and reliability problems of newly delivered equipment. Other problems include foreign competition, increasing technological complexity and sophistication, and unpredictable order cycles (the "feast or famine" syndrome).

Insufficient demand for railcars means that the economies that accompany large scale production are unavailable in the vehicle market. For example, until New York City buys new railcars, orders are likely to be small and infrequent. The replacement railcar market is estimated at 200-300 cars per year over the next 10-20 years. New rail systems will only require relatively small quantities of cars, and therefore, the market can only support a small number of builders. Suppliers of major components, as well as vehicle manufacturers, suffer from similar problems of sporadic and uncertain demand and low volume.

Domestic railcar manufacturers have faced significant foreign competition during the last few years, with foreign concerns making significant inroads in domestic transit procurements. Due to mounting complaints by domestic manufacturers, Congress included a domestic preference provision in the recently enacted Surface Transportation Assistance Act of 1978.

It is worth noting that State and local laws, as well as Federal requirements, constrain public transit authorities when they are purchasing equipment. Indeed, a great many public authorities are still governed by procurement statutes and regulations mandating the use of advertised bidding with award to the low bidder. And, while UMTA has on occasion approved the use of negotiated procurements when State or local law permitted it, UMTA's general policy favors the use of advertised bidding.

As a result of the emphasis on low bid price in determining contract awards, manufacturers generally respond by investing fewer resources in product improvement and development in order to offer low bid prices. Transit authorities and manufacturers alike have complained that the emphasis on low bid price has adversely affected the quality of products, to the mutual disadvantage of the purchaser and the seller. While we are aware of these problems, the low bid procedure clearly offers the most objective means of assuring equal opportunity for all potential bidders. We are exploring the possibility of using a life cycle cost procurement concept, but are not yet satisfied that it is suitable for purchases of transit vehicles.

Having provided a broad overview of the transit equipment marketplace and the Federal presence in it, I would like now to discuss Transbus briefly, as it illustrates well the complexity of the issues we are discussing today. Since the history of Transbus is not yet complete, I cannot offer conclusions, but only outline some of the problem areas.

Transbus has been under development since 1971, when UMTA initiated a major research project to develop an improved transit bus that would attract mass ridership, improve productivity by being readily accessible to all bus riders (including those elderly and handicapped persons for whom the high floors and stairs of current buses are serious obstacles - as well as to people who are confined to wheelchairs), and encourage continued competition among the manufacturers of transit buses. UMTA enlisted the aid of the three major domestic bus manufacturers to supply prototypes of such a bus for testing. Prototypes were built by all three, tested by UMTA contractors, and demonstrated in actual service in four cities.

In January of 1975, UMTA issued a "Policy for Introducing Transbus into Nationwide Service" which announced that UMTA grantees would be required to purchase Transbus and that UMTA would develop a performance specification for the new bus that would be a composite of the prototypes that had been developed by AM General, GM and Flxible. This policy statement did not set a date after which recipients of federal funds would be required to purchase Transbus. However, in recognition of the efforts of General Motors to develop Advanced Design Buses (ADB's) independent of the Transbus program, it did state that in the period prior to introduction of Transbus, UMTA would fund buses such as the ADB's.

Later in 1975, the question of a Transbus mandate had become quite controversial and Robert Patricelli, the new UMTA Administrator announced that he would reopen the matter. In July 1976, it was announced that Transbus would not be mandated, but that DOT would support procurements of ADB's. Litigation was begun by representatives of the elderly and handicapped to reverse this decision. Also, litigation challenging the first procurement of ADB's was brought by AM General which did not manufacture an ADB and thus could not compete for such procurements.

When this Administration took office, the elderly and handicapped community was outraged over the refusal to mandate Transbus, and the litigation by AM General over the initial ADB procurement had produced a virtual halt in bus procurements. Further, because of previous uncertainty over federal bus procurement policies, each of the three domestic bus manufacturers was in a different competitive position and was ready to sell and develop different products, leaving the transit bus market in disarray.

One of Secretary Adams earliest actions was to have the General Counsel's office review the statutory framework of the Transbus issue. The statutory guidelines seemed clear. In addition to DOT's general responsibility, under the UMTAct, to assist in the development of improved mass transportation facilities and equipment, a 1970 amendment added section 16 to the UMTAct declaring the mass transportation needs of elderly and handicapped persons to be of special national importance and requiring DOT to exercise a particular leadership role in assuring that these rights were protected. Two years later, section 504 of the Rehabilitation Act of 1973 added further statutory support by establishing the right of every handicapped person to be free of discrimination in any federally-assisted program. Transbus, we believed, offered an opportunity to fulfill these statutory requirements by mandating technological improvements which would enhance the accessibility of mass transportation facilities to the elderly and handicapped while producing a better bus overall.

Against this background -- a clear policy goal, strong statutory guidelines, stymied bus procurement, and a major research program dropped before fruition -- we decided to reopen the question of a Transbus mandate. We held a new round of public hearings and meetings with representatives of the three principal American bus manufacturers, elderly and handicapped groups, local transit officials and others.

On May 19, 1977, the Secretary issued the Transbus mandate. Based on the hearing record and the experience with the prototypes, we concluded that it was within the industry's technological capability to ensure that elderly and handicapped persons were accorded access to urban mass transit buses through the introduction of a new low floor design.

We recognized at the time of the mandate that there were remaining product development issues. But all three manufacturers had built prototypes and the feasibility of building the bus was never in question. We believed that the manufacturers could meet the challenge of producing Transbus. And we believed the pressure of effective competition among them would result in its prompt introduction.

During the summer following the May 1977 mandate, an alternate approach to the Transbus design was offered to the manufacturers and UMTA by a major component supplier. This alternate was to use a single, rather than a double, rear axle. This alternate represented considerable advantages and it was vigorously pursued by UMTA with the operators, manufacturers and elderly and handicapped groups for close to a year, until June 1978. The advantages appeared to be as follows:

- Reduced development time because most components would be already in production, (or would require relatively minor modifications).
- Weight reduction in Transbus resulting in better fuel consumption and less operating cost.
- Cost reduction in development as well as in the recurring cost of Transbus.
- Improved maintainability and reliability and therefore less maintenance costs.

It appeared that the major known disadvantage of Transbus, its higher cost, could be eliminated. Specifications reflecting the above changes were issued in March 1978 and comments were solicited by UMTA in the Federal Register on March 21, 1978.

Further review unfortunately surfaced a number of significant and conflicting disadvantages for this concept:

- To maintain the low floor and single interior step at the front of the bus, the floor would have to be raised toward the rear, requiring more or higher interior steps at the rear door.
- The operators, manufacturers and suppliers could not agree on a choice among three alternatives to raising the floor at the rear, to accommodate the bulkier single rear axle.

- The use of more readily available wheels, brakes and tires (the latter of which normally protrude into the passenger compartment) would have caused abnormally high seats over the wheelwells.
- The resultant single rear axle Transbus when fully loaded would have violated Federal and several State laws with respect to axle loading.

By July 1978, the Secretary accepted the UMTA recommendation to revert back to the original double rear axle configuration because of the disadvantages, and illegality under some circumstances, of the single rear axle Transbus.

During the latter part of this period, General Motors was expressing particular objections to the part of the mandate which required a ramp at the front door of Transbus. After consultation with manufacturers, operators and this Committee, the Administration incorporated an option of either a front door lift or ramp in the Transbus mandate, and acknowledged that the effective date of the mandate would have to be extended once delivery dates for Transbus were contractually committed. The Transbus Procurement Requirements (TPR) announced in September 1978 incorporated both changes (reverting to double rear axles and the front door lift or ramp option) described above.

The initial Transbus Consortium of Los Angeles, Miami and Philadelphia has been actively participating and following these developments since October 1977. The generic Transbus specifications and procurement requirements appearing to have been resolved last fall, the Consortium focused on the unique needs of each participating member and on the unusual conditions resulting from the procurement of a new bus whose initial delivery was four to five years in the future. A Consortium amendment was developed to the TPR and approved by UMTA, to cover price escalation, incentives for early delivery and disincentives for late delivery as well as several terms and conditions to assure that the risk taken by the Consortium is minimized. On January 2, 1979, the Consortium issued the invitation for bids for 530 Transbuses due March 30, 1979. This date was extended at the request of Grumman Flxible to May 2, 1979. On that date, however, no bids were received.

We need to consider carefully the competing considerations and conflicting demands, beyond those evidenced in the history, which may have affected the bus manufacturers' decision not to bid on Transbus.

- To meet the low floor requirement and the State and Federal axle weight limits, a new double rear axle, smaller wheels, brakes and tires would have to be developed. These new components would be unique to Transbus, therefore making manufacturers less willing to invest in their development. In contrast, several current bus components can also be used on intercity buses and trucks.

- Another factor affecting Transbus is its cost. While estimates vary, all agree that Transbus with double rear axles will cost more than the ADB's. Manufacturers may feel that local operators will be reluctant to pay the increased costs and some local operators, even though they receive an 80 percent Federal subsidy, may feel that the price and the local share are too great.
- As I discussed earlier, the bus market, while not a negligible one, has been essentially fixed and not subject to sudden or significant increase. Moreover, there are only a limited number of bus manufacturers. GM and Grumman-Flxible are the principal U.S. bus manufacturers, AM General having withdrawn from the field. There are a number of foreign bus manufacturers, but they have not been significant participants and, in view of the Buy America policy, they may remain absent from the U.S. market.
- The framework of a limited market and a small number of manufacturers is one which, by its very nature, is not likely to lead to significant or rapid experimentation or to bold new initiatives. UMTA, through its efforts to encourage consortia of buyers and progress payments, has sought to make procurements more attractive to the manufacturers. The consortium of Los Angeles, Philadelphia, and Miami, with a combined order of 530 Transbuses to be followed by other consortia was an important feature of our effort to launch Transbus.

- Undoubtedly the fact that both GM and Grumman-Flxible have made considerable investments and have begun marketing their ADB's within the past three years creates a strong corporate interest in trying to maximize the sales of those vehicles before making new design changes and considering additional investments.
- Local operators also like to preserve their flexibility to the extent possible in terms of the ability to set specifications to meet their own requirements. In the Transbus program, we took an important step to recognize this desire through options, and particularly the option last fall to permit either a ramp or a lift at the front door. While some local operators may still feel that the Transbus specifications do not allow sufficient room for individualized specifications, more extensive local option would again lead us away from standardization.
- Low bid procurement procedures are also a factor in the Transbus situation - or in any new design situation. Faced with a low bid procedure, manufacturers are likely to be cautious about investing time and money in new technology. And GM noted, in its announcement that it would not bid on Transbus, that it was concerned that the initial Transbus contracts would be awarded on a low bid basis but future contacts might be awarded on a life cycle cost basis. This, GM said, would require a manufacturer to develop two distinct designs.

- Clearly uncertainty about final government policy with respect to the Transbus mandate has played a role in arriving where we are today.

Mr. Chairman, the Department of Transportation remains committed to the proposition that we should develop a bus which better serves the needs of our citizens, including the elderly and handicapped. We were severely disappointed that no manufacturer chose to submit a bid on the Transbus Consortium procurement.

Secretary Adams has announced that he will ask an independent scientific review panel to analyze the specifications, costs and performance of Transbus. After its review, this panel will be able to advise the Secretary - and the public - whether it is possible to produce Transbus for a reasonable price.

I have described for you the history of our decision to mandate Transbus and some of the conflicting demands which have made its development difficult. It is obviously a complicated mixture. We expect an impartial assessment from the review panel and, once that is in hand, we will be able to determine what our next steps should be in our continuing effort to improve transit service in this country.

The history of Transbus demonstrates the many and complex and often conflicting factors that surround transit equipment procurements. Federal procurement policies and procedures are certainly one element, although they are not the only piece of the puzzle. We are open to suggestions for improvement in our procurement methods and, as you are aware, the 1978 Surface Transportation Assistance Act required UMTA to undertake an evaluation of the procurement process as it relates to transit equipment. This study will address the feasibility and benefits of alternative

procurement techniques. We hope that the study will result in a better understanding of the problem areas and an improvement in the procurement process. We will be in a position to discuss specific recommendations when this study is completed.

There is always room for improvement in the procurement process. This is evidenced at the state level by the recent effort by the American Bar Association to establish a Model Procurement Code. This effort, which has been ongoing for several years, is now nearing fruition. Our own internal efforts in streamlining procedures and cutting red tape are steps in a continuing effort to improve the procurement process.

I would like to note in closing, Mr. Chairman, that the transit marketplace may be significantly affected by the energy situation. While the individual automobile is likely to remain the predominant means of personal transportation in the U.S. for the foreseeable future, the demand for public transit - especially in the urban areas - can be expected to increase substantially in the face of an energy crunch. At the moment, our transit systems are not in a good position to respond to any such increased demands. Any serious movement by commuters to transfer from autc to transit would swamp the transit systems of the country. To help meet this problem, the President has announced that additional financial assistance for the transit program will be made available from the Energy Security Fund to be established with receipts from windfall profit taxes on oil. This hearing on the Federal role in transit equipment procurements is thus particularly timely.

Mr. Chairman, that concludes my prepared statement. My colleagues and I would be pleased to answer any questions you or any other memebers of the Subcommittee may have.